

1
2
3
4
5
6 UNITED STATES DISTRICT COURT

7 DISTRICT OF NEVADA

8 * * *

9 ARTURO TORRES OCHOA,

Case No. 3:14-cv-00474- MMD-VPC

10 Plaintiff,

ORDER

11 v.

12 RENEE BAKER, et al.,

13 Defendants.

14
15 This action is a *pro se* civil rights complaint filed pursuant to 42 U.S.C. § 1983 by
16 a state prisoner. On September 16, 2014, this Court issued an order notifying Plaintiff
17 that he had “three strikes” pursuant to 28 U.S.C. § 1915(g). (Dkt. no. 3 at 1-2.) The
18 Court informed Plaintiff that if he did not pay the \$400.00 filing fee in full within thirty (30)
19 days of the date of that order, the Court would dismiss the action without prejudice. (*Id.*
20 at 2.) The thirty (30) day period has now expired and Plaintiff has not paid the full filing
21 fee of \$400.00.

22 District courts have the inherent power to control their dockets and “[i]n the
23 exercise of that power, they may impose sanctions including, where appropriate . . .
24 dismissal” of a case. *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829,
25 831 (9th Cir. 1986). A court may dismiss an action, with prejudice, based on a party’s
26 failure to prosecute an action, failure to obey a court order, or failure to comply with
27 local rules. See *Ghazali v. Moran*, 46 F.3d 52, 53-54 (9th Cir. 1995) (dismissal for
28 noncompliance with local rule); *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir.

1 1992) (dismissal for failure to comply with an order requiring amendment of complaint);
 2 *Carey v. King*, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (dismissal for failure to comply
 3 with local rule requiring *pro se* plaintiffs to keep court apprised of address); *Malone v.*
 4 *U.S. Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to comply
 5 with court order); *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986) (dismissal
 6 for lack of prosecution and failure to comply with local rules).

7 In determining whether to dismiss an action for lack of prosecution, failure to
 8 obey a court order, or failure to comply with local rules, the court must consider several
 9 factors: (1) the public's interest in expeditious resolution of litigation; (2) the court's need
 10 to manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy
 11 favoring disposition of cases on their merits; and (5) the availability of less drastic
 12 alternatives. *Thompson*, 782 F.2d at 831; *Henderson*, 779 F.2d at 1423-24; *Malone*,
 13 833 F.2d at 130; *Ferdik*, 963 F.2d at 1260-61; *Ghazali*, 46 F.3d at 53.

14 In the instant case, the Court finds that the first two factors, the public's interest in
 15 expeditiously resolving this litigation and the Court's interest in managing the docket,
 16 weigh in favor of dismissal. The third factor, risk of prejudice to Defendants, also weighs
 17 in favor of dismissal, since a presumption of injury arises from the occurrence of
 18 unreasonable delay in filing a pleading ordered by the court or prosecuting an action.
 19 See *Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor — public
 20 policy favoring disposition of cases on their merits — is greatly outweighed by the
 21 factors in favor of dismissal discussed herein. Finally, a court's warning to a party that
 22 his failure to obey the court's order will result in dismissal satisfies the "consideration of
 23 alternatives" requirement. *Ferdik*, 963 F.2d at 1262; *Malone*, 833 F.2d at 132-33;
 24 *Henderson*, 779 F.2d at 1424. The Court's order requiring Plaintiff to pay the full filing
 25 fee within thirty days expressly stated: "For the foregoing reasons, it is ordered that this
 26 action will be dismissed without prejudice unless Plaintiff pays the \$400.00 filing fee in
 27 full within thirty (30) days of entry of this order." (Dkt. no. 3 at 2.) Thus, Plaintiff had
 28 ///

1 adequate warning that dismissal would result from his noncompliance with the Court's
2 order to pay the full filing fee within thirty (30) days.

3 It is therefore ordered that this action is dismissed without prejudice based on
4 Plaintiff's failure to pay the \$400.00 filing fee in compliance with this Court's September
5 16, 2014, order.

6 It is further ordered that the motion for appointment of counsel (dkt. no. 1-2) is
7 denied as moot.

8 It is further ordered that the Clerk of Court shall enter judgment accordingly.

9
10 DATED THIS 21st day of October 2014.
11
12



13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

MIRANDA M. DU
UNITED STATES DISTRICT JUDGE